

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Antitrust Division
Department of Justice
Washington, D.C. 20530,
Plaintiff,

v.

THE HEARST TRUST
c/o The Hearst Corporation
959 Eighth Avenue
New York, NY 10019

and

THE HEARST CORPORATION,
959 Eighth Avenue
New York, NY 10019

Defendants.

Civil Action No. 1:01CV02119

**COMPLAINT FOR CIVIL PENALTIES
FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING
REQUIREMENTS OF THE HART-SCOTT-RODINO ACT**

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of civil penalties against the Defendants named herein for failing to comply with the premerger reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and alleges as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), also known as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act” or “Act”), to recover civil penalties for violation of the HSR Act.

2. This Court has jurisdiction over the Defendants and over the subject matter of this action pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), and 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355.

3. Venue in this District is proper by virtue of 28 U.S.C. §§ 1391 and 1395, and by virtue of Defendants’ consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANTS

4. Defendant The Hearst Trust is the sole shareholder and ultimate parent entity of Defendant The Hearst Corporation (collectively “Defendant Hearst”). The Hearst Corporation is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 959 Eighth Avenue, New York, New York 10019. Defendant Hearst’s wholly-owned subsidiary, First DataBank, Inc. (“FDB”), produces and sells integratable drug data files primarily in the United States.

5. At all times relevant to this complaint, Defendant Hearst had total assets valued in excess of \$100 million and was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12.

OTHER ENTITIES

6. Medi-Span, Inc. and Medi-Span International, Inc. (collectively “Medi-Span”) were, prior to their acquisition by Defendant Hearst and their integration into FDB, corporations organized and existing under the laws of the state of Indiana, with their principal place of business at 8425 Woodfield Crossing Blvd., Indianapolis, Indiana 46240. They were owned by J.B. Laughrey, Inc. (“Laughery”), whose sole shareholder was J. Bruce Laughrey, a natural person. The principal business of Medi-Span, Inc. was, prior to its acquisition by Defendant Hearst and integration into FDB, the production and sale in the United States of integratable drug data files. Medi-Span International, Inc. also produced and sold different integratable drug data files, in much smaller volume than Medi-Span, Inc., for use by customers outside the United States.

7. At all times relevant to this complaint, Medi-Span had total assets valued in excess of \$10 million and was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12.

THE ACQUISITION

8. On or about January 15, 1998, Defendant Hearst acquired Medi-Span through the acquisition of all the capital stock of J.B. Laughery, Inc. for approximately \$38 million (“Acquisition”).

THE HART-SCOTT-RODINO ACT AND RULES

9. The HSR Act requires certain acquiring persons and certain person whose voting securities or assets are acquired to file notification with the Federal Trade Commission and the

Department of Justice (“federal antitrust agencies”) and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate proposed transactions and to determine whether to seek an injunction to prevent the consummation of transactions that may violate the antitrust laws.

10. The HSR Act provides that the Federal Trade Commission or Department of Justice may require the parties to an acquisition reportable under the HSR Act to provide additional information or documentary material relevant to the acquisition. 15 U.S.C. § 18a(e)(1). Such a request extends the waiting period for an additional period after the date the federal antitrust agencies receive the information required to be submitted pursuant to such request. 15 U.S.C. § 18a(e)(2).

11. Section (d)(1) of the HSR Act, 15 U.S.C. § 18a(d)(1), authorizes the Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, to require that the notification required by the Act be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to determine whether such acquisition, if consummated, may violate the antitrust laws.

12. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), Premerger Notification Rules were promulgated to carry out the purposes of the HSR Act. 16 C.F.R. Part 800 *et. seq.* (“Rules”). These Rules require that notification be provided to the federal antitrust

agencies in accordance with a Notification and Report Form that is made part of the Rules. 16 C.F.R. § 803.1, and appendix to 16 C.F.R. Part 803.

13. The instructions to the Notification and Report Form, appendix to 16 C.F.R. Part 803, require the submission of the following documentary material in response to Item 4(c) of the Notification and Report Form:

all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) . . . for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets

14. The Rules require a list of documents responsive to Item 4(c) that are withheld based upon a claim of privilege. 16 C.F.R. § 803.3(c).

15. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. The maximum amount of the civil penalty is \$10,000 per day through November 19, 1996, pursuant to § 18a(g)(1), and \$11,000 per day thereafter, pursuant to the Debt Collection Improvements Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (October 21, 1996).

VIOLATION ALLEGED

16. Defendant Hearst was required by the HSR Act to submit a Notification and Report Form and observe the Act's waiting period before it acquired in excess of \$15 million of the voting securities of Medi-Span. On December 12, 1997, Defendant Hearst filed a Notification

and Report Form with the Federal Trade Commission and the Antitrust Division of the Department of Justice for the proposed acquisition of Medi-Span (“December 1997 Premerger Notification”). Laughrey also filed a Notification and Report Form.

17. Defendant Hearst submitted a single document responsive to Item 4(c), dated May 6, 1977, and did not list any privileged Item 4(c) documents with the December 1997 Premerger Notification.

18. Neither the Commission nor the Department of Justice issued a Request for Additional Information and Documentary Material within 30 days of the filing of Hearst’s and Laughrey’s premerger notification.

19. Defendant Hearst consummated the Acquisition on or about January 15, 1998.

20. After the Acquisition was consummated, customers complained to the Federal Trade Commission, and the Commission began an investigation to determine whether the Defendants violated the antitrust laws (“the post-consummation investigation”). The Commission filed in this Court a Complaint for Permanent Injunction and Other Equitable Relief Pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act on April 5, 2001 (Civ. No. 1:01CV00734).

21. During the post-consummation investigation, Defendant Hearst submitted documents that caused Federal Trade Commission staff to advise Defendant Hearst that Hearst’s December 1997 Premerger Notification was deficient because it failed to include documents required by Item 4(c).

22. On or about August 21, 2000, Defendant Hearst recertified its Notification, amending its response to Item 4(c) to include three documents that were not previously submitted and a list

of six other documents that had not been listed on the December 1997 Premerger Notification and were being withheld based on attorney-client and work product privileges.

23. Defendant Hearst failed to submit with its December 1997 Premerger Notification documents required by Item 4(c) of the Notification and Report Form, including documents recommending the acquisition of Medi-Span that went to the Hearst Corporation's Board of Directors in September of 1997 and a list of documents responsive to Item 4(c) being withheld on grounds of privilege.

24. As a result of Defendant Hearst's failure to submit documents required by Item 4(c) of the Notification and Report Form with its December 1997 Premerger Notification, Defendant Hearst did not comply with the reporting and waiting requirements of the HSR Act and Rules before consummating the Acquisition.

25. Defendant Hearst's failure to submit documents required by Item 4(c) hindered the ability of the federal antitrust agencies to analyze the competitive effects of the Acquisition prior to consummation.

26. Defendant Hearst was in continuous violation of the HSR Act from January 15, 1998 until at least November 22, 2000.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the January 15, 1998 acquisition by Defendant Hearst of voting securities of Medi-Span was in violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant Hearst was in violation of the HSR Act each day from January 15, 1998 until at least November 22, 2000;

2. That the Court order Defendant Hearst to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L.104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996);

3. That the Court order such other and further relief as the Court may deem just and proper;

4. That the Court award the Plaintiff its costs of this suit.

Dated: October 11, 2001.

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

_____/s/_____
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_____/s/_____
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